

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DR. NANCY SEBRING,

Plaintiff,

v.

THE DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT,

Defendant.

NO. CE 71688

**ANSWER TO PETITION FOR
DECLARATORY AND
INJUNCTIVE RELIEF
PURSUANT TO IOWA CODE
SECTION 22.8**

COMES NOW the named Defendant, The Des Moines Independent Community School District (hereafter "District"), and for its Answer to the Petition for Declaratory and Injunctive Relief, states as follows:

1. Defendant, the Des Moines Independent Community School District (hereinafter "School District"), is a public entity organized and existing under the laws of the State of Iowa and located in Des Moines, Polk County, Iowa,

ANSWER: Paragraph 1 is admitted.

2. Plaintiff, Dr. Nancy Sebring, is the former Superintendent of the School District.

ANSWER: Paragraph 2 is admitted.

3. As part of the duties of Plaintiff's position as Superintendent, she sent and received dozens of emails daily—both to and from her School District email address.

ANSWER: Defendant admits Plaintiff sent and received emails using the District's email system as part of her duties as Superintendent. The remaining allegations are denied for lack of information sufficient to form a belief.

4. *A de minimus* number of these emails were of a purely personal nature and the content of said emails is of no public interest (hereinafter "Personal Communications").

ANSWER: Paragraph 4 is denied for lack of information sufficient to form a belief with respect to the number of e-mails and whether they were "of a purely personal nature." For further answer, Defendant states that emails sent or received using the District's email system are "public records" under the Iowa Open Records Law, Iowa Code § 22.1(3)(a).

5. In addition, a portion of the Personal Communications include correspondence sent to Plaintiff by persons outside of the government who would have refrained from making such communications had they known the information would be available for general public examination. *See* Iowa Code Subsection 22.7(18) (2012).

ANSWER: Paragraph 5 is denied for lack of information sufficient to form a belief. For further answer, to the extent an email satisfies the conditions in § 22.7(18), certain information in the email remains a public record. Iowa Code § 22.7(18)(a)-(c).

6. On May 7, 2012, Jonathon Braden of the *Omaha World-Herald* made an Iowa Code Chapter 22 records request to Defendant for all of Plaintiff's correspondence "about Omaha, the Omaha Public Schools or anything related to the Omaha Public Schools superintendent position." A copy of the request was provided to Plaintiff by Defendant.

ANSWER: Paragraph 6 is admitted.

7. On May 9, 2012, Mr. Braden amended his records request by narrowing the scope. A copy of the request was also provided to Plaintiff by Defendant.

ANSWER: Paragraph 7 is admitted.

8. Again on May 9, 2012, Kathy Bolten of the *Des Moines Register* made an Iowa Code Chapter 22 records request for "all e-mails sent and received by Superintendent Nancy Sebring between Feb. 1, 2012 and April 30, 2012." A copy of the request was provided to Plaintiff by Defendant.

ANSWER: Paragraph 8 is admitted.

9. On May 9, 2012, Plaintiff voluntarily resigned her position as the Superintendent of the School District.

ANSWER: Defendant admits Plaintiff offered her resignation on May 9, 2012, and states that the School Board accepted the resignation on May 10, 2012.

10. On or about May 10, 2012, the *Des Moines Register* revised its records request to Defendant for all of Plaintiff's emails between the dates of February 1, 2012, through May 10, 2012 that contain the words "Omaha," "charter school," "Nina Rasmussen" and "Jennifer Kreasko." Defendant did not provide a copy of the actual request to Plaintiff; however, it did provide Plaintiff with what it said was the text of the request.

ANSWER: Paragraph 10 is admitted. For further answer, Defendant states it provided Plaintiff's counsel with the actual text of the open records request received from the *Des Moines Register*.

11. Defendant is a "government body" for purposes of Iowa Code Chapter 22—the open records law. *See* Iowa Code Section 22.1(1) (2012).

ANSWER: Paragraph 11 is admitted.

12. Defendant has determined that all of Plaintiff's Personal Communications are "public records" subject to disclosure pursuant to Iowa Code Section 22.1(2) (2012) and, in fact, have responded to the *Omaha World-Herald* and *Des Moines Register* by turning over all the documents responsive to these requests with some redactions.

ANSWER: For answer to paragraph 12, the District determined that email messages sent or received using the District's computer system are "public records" pursuant to Iowa Code Section 22.1(3). Defendant further states that it redacted certain

information in the emails disclosed pursuant to the open records requests in question, based upon a judgment that the redacted information was “confidential” under one or more categories in Iowa Code § 22.7. To the extent the information in the emails in question did not qualify as a confidential record under Section 22.7, it was disclosed in response to the open records requests in question.

13. School District practice is to delete the emails of former employees; however, Defendant has refused Plaintiff's repeated requests for the School District to follow its past practice.

ANSWER: Paragraph 13 is denied.

14. Plaintiff is aware that other individuals either have or will be making additional open records requests, including requests for un-redacted copies of the documents already released.

ANSWER: Paragraph 14 is denied for lack of information sufficient to form a belief.

15. On or about June 1, 2012, Defendant notified Plaintiff that it would no longer notify Plaintiff if open records requests involving Plaintiff were received by Defendant.

ANSWER: Paragraph 15 is admitted. For further answer, Defendant states it is not obligated under the Open Records Law to disclose open records requests to Plaintiff.

16. Beginning on June 1, 2012, various news organizations started running stories about Plaintiff that have caused damage to her personally and professionally.

ANSWER: Defendant admits various news organizations published stories about Plaintiff. The remaining allegations are denied for lack of information sufficient to form a belief.

17. While free and open examination of public records is generally in the public interest, the facts in this case do not support the complete disclosure of purely personal information—especially if Plaintiff will not be provided the opportunity to review Defendant's response.

ANSWER: Defendant states it is obligated under Iowa Code Chapter 22 to disclose records that are “public records”, and that do not qualify as “confidential records”. In disclosing email communications requested by the *Des Moines Register* and *Omaha World-Herald*, the District attempted in good faith to comply with its obligations under the Open Records Law. The remaining allegations are denied for lack of information sufficient to form a belief.

18. Plaintiff seeks the opportunity to review the responses to any open records request to ascertain if any exemptions apply such as Iowa Code Subsection 22.7(18), which entitles Plaintiff to confidentiality of communications not required by law that are made to government employees by persons outside of the government upon a reasonable belief that those persons would be discouraged from making the communications if they were available for general public inspection. *See* Iowa Code §22.7(18) (2012).

ANSWER: Defendant admits Plaintiff seeks the opportunity to review the District's responses to open records requests, but denies Plaintiff has that right under the Open Records Law. For further answer, to the extent a “public record” qualifies as a “confidential record” under § 22.7(18), Defendant admits it is not subject to disclosure. Defendant denies the information disclosed in the emails provided to the *Des Moines Register* and *Omaha World-Herald* qualified as confidential records under § 22.7(18).

19. Even if no specific exemption applies, Plaintiff seeks the opportunity to review the response to records requests as the disclosure of said information may not be in the public interest and would cause additional injury to herself and others. *See Iowa Code Subsections 22.8(1)(a)-(b) (2012).*

ANSWER: Defendant admits Plaintiff seeks the opportunity to review the District's responses to open records requests, but denies Plaintiff has that right under the Open Records Law. Defendant states it is obligated under Iowa Code Chapter 22 to disclose records that are "public records", and that do not qualify as "confidential records". Defendant denies for lack of information sufficient to form a belief whether disclosure would cause injury to Plaintiff or others.

20. On or about May 25, 2012, Defendant notified Plaintiff that if she filed an injunction regarding the release of records, Defendant intended to release said records prior to the Court having an opportunity to issuing a ruling.

ANSWER: Defendant states that it notified Plaintiff's counsel of its intention to comply with the Open Records Law in connection with requests by the *Des Moines Register* and *Omaha World-Herald*.

21. At a minimum, Defendant should be required to notify Plaintiff of any future records requests involving Plaintiff, Defendant should follow their long-standing record retention practice involving former employees, and Defendant should be required to wait until after the Court rules on the injunction prior to release any records.

ANSWER: Defendant denies it is obligated under the Open Records Law to notify Plaintiff of future open records requests, and denies that it did not follow its normal record retention practices and procedures with respect to the emails in question. Defendant

further states that on June 2, 2012, it received another open records request from the *Des Moines Register* concerning emails sent to and from Dr. Sebring, and that Plaintiff's counsel was notified of the request. The District is in the process of identifying and reviewing the records responsive to the June 2, 2012 open records request. To the extent Plaintiff seeks relief not permitted under Iowa Code Chapter 22 or the Iowa Rules of Civil Procedure governing injunctions, it should be denied.

DEFENSES AND REQUESTS FOR RELIEF

1. Plaintiff's Petition for Declaratory and Injunctive Relief does not comply with the requirements of Iowa Code Section 22.8(1), in that the Petition is not supported by affidavit.
2. In responding to open records requests concerning Dr. Sebring's email communications, the District has at all times acted in good faith.
3. The District intends to comply with any and all open records requests concerning the emails of Dr. Sebring, including, but not limited to, the June 2, 2012 open records request propounded by the *Des Moines Register*, subject to any order of the Court concerning its obligations under Chapter 22. Defendant requests the Court to schedule a hearing as soon as possible and issue a ruling on Plaintiff's Petition for Declaratory and Injunctive Relief.

BRADSHAW, FOWLER, PROCTOR & FAIRGRAVE, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon one of the attorneys of record for all parties to the above-entitled cause by serving the same on such attorney at his/her respective address/fax number as disclosed by the pleadings of record herein, on the 7 of June, 2012 by:

<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> UPS
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other _____

D. Henkels